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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,516	11/13/2001	Juergen Kaufmann	089467-000000US	4782
20350	7590	07/28/2004	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			ROSENBERGER, RICHARD A	
			ART UNIT	PAPER NUMBER
			2877	

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

1. Claims 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim claims 1-33 of copending Application No. 10/054,116. Although the conflicting claims are not identical, they are not patentably distinct from each other because the three applications are all directed to the same general invention, a gas permeable probe. It is unclear what the distinctions among the claimed subject matter in these three applications is intended to be. The same subject matter appears to be claimed in various degrees across the applications. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 appears to have some language missing, which renders the claim unclear. The last paragraph of the claim states that there is "an intermediate space being formed between said support tube .." without setting forth the other structure which the intermediate space is between. Thus the intermediate space and its location in the claimed structure is unclear and confusing.

2. Claims 1-9 appear to be allowable except for the provisional double patenting rejection above. MPEP 804 I.B. provides:

If the “provisional” double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent. The examiner should maintain the double patenting rejection in the other application as a “provisional” double patenting rejection which will be converted into a double patenting rejection when the one application issues as a patent.

The copending application above, Application No. 10/054,116, has previously been allowed, although it has not yet issued. As that application has been allowed, as set forth in the MPEP, the provisional double patenting rejection is being maintained in this application until the Application No. 10/054,116 issues as a patent, in which case the rejection will be converted into a double patenting rejection. It is noted that a proper terminal disclaimer filed in this case will overcome the double patenting rejection.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

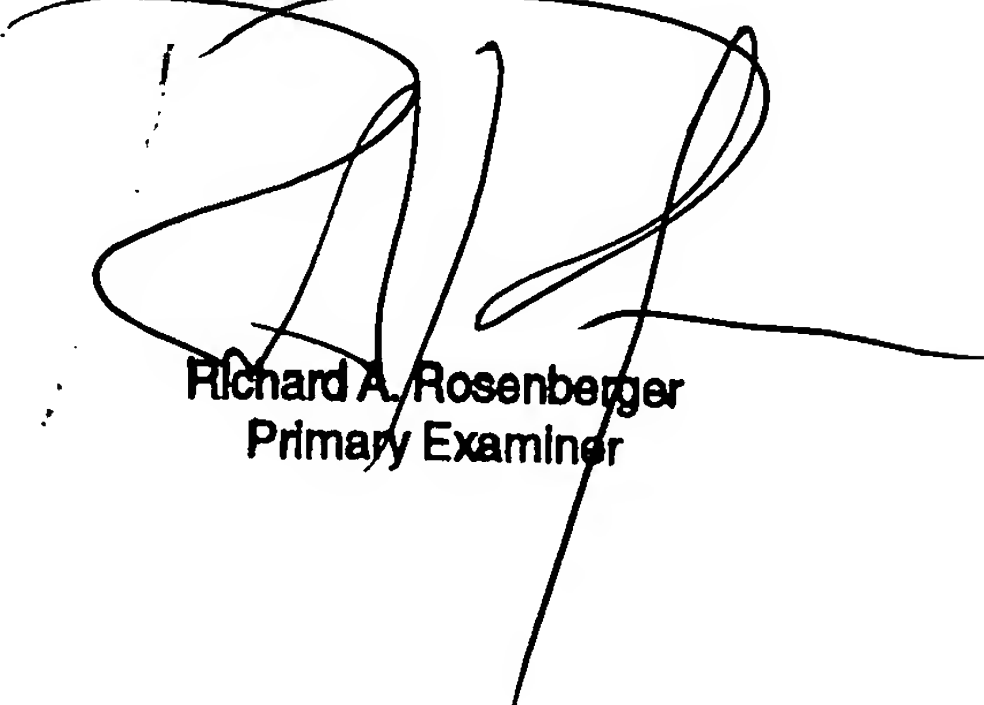
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A Rosenberger whose telephone number is (571) 272-2428. The examiner can normally be reached on Monday through Friday during the hours of 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2059. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

R. A. Rosenberger
23 July 2004



Richard A. Rosenberger
Primary Examiner